



THE FORT ST. GEORGE GAZETTE

EXTRAORDINARY.

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PUBLIC DEPARTMENT.

ORDINANCE No. I of 1922.

Fort St. George, February 25, 1922.

No. 45.—

An Ordinance to provide for the speedy trial of certain offences committed during the period while Martial Law was in force, or arising out of the circumstances which necessitated the enforcement of continuance of Martial Law, in certain areas in the Madras District of the Madras Presidency, and also to enable the Local Government to take certain steps for the protection of law-abiding citizens and for the restoration and maintenance of order in those areas.

WHEREAS Martial Law has been in force in certain areas in the Madras District of the Madras Presidency and has now been withdrawn therefrom and whereas an emergency has thereby arisen which makes it necessary to provide for the speedy trial of certain offences committed during the period while Martial Law was in force or arising out of the circumstances which necessitated the enforcement or continuance of Martial Law and also to enable the Local Government to take certain steps for the protection of law-abiding citizens and for the restoration and maintenance of order in those areas:

NOW KNOW YE that the Governor-General, in exercise of the powers conferred by section 72 of the Government of India Act, in pleased to make and promulgate the following Ordinance:

1. This Ordinance may be called the Madras (Restoration of Order) Ordinance, 1922.

2. In this Ordinance the "Local Government" means the Local Government of Madras.

3. (1) The Local Government may make regulations for the protection of law-abiding citizens and for the restoration and maintenance of order in the area specified in the schedule (hereinafter referred to as the scheduled area).

(2) Without prejudice to the generality of the foregoing power such regulations may provide

(a) for the circumstances, in addition to the circumstances laid down in the Code of Criminal Procedure, 1898, in which, and the purposes for which, military force may be utilized in the execution of the civil authorities;

(b) for control of the distribution of foodstuffs within the scheduled area;

(c) for the prohibition of the export of foodstuffs from the scheduled area.

(3) Such regulations may provide that any contravention thereof, or of any order issued thereunder shall be punishable with imprisonment which may extend to two years, or with fine, or with both. Any person who contravenes any such regulation or order may be arrested without warrant.

(4) Such regulations shall be published in the *Port St. George Gazette* and in such other manner as the Local Government may direct, and shall have upon bare effect as if enacted in this Ordinance.

4. (1) For the purposes of this Ordinance the Local Government may constitute the following classes of courts, namely:—

- (a) Summary Courts;
- (b) Courts of Special Magistrates;
- (c) Courts of Special Judges.

(2) The Local Government may appoint

(a) Any Magistrate to exercise the powers of a Summary Court;

(b) Any Magistrate who has exercised the powers of a First-class Magistrate for not less than two years to be a Special Magistrate.

(c) Any officer who has acted for a period of at least two years in the exercise of the powers of a Sessions Judge under the Code of Criminal Procedure, 1898, to be a Special Judge.

5. Subject to the provisions of this Ordinance, courts constituted under section 4 may try the following offences, namely:—

(a) Any offence which might have been tried under the Martial Law Ordinance, 1921, the Martial Law (Supplementary) Ordinance, 1921, the Martial Law (Military Courts) Ordinance, 1921, or the Martial Law (Special Magistrates) Ordinance, 1921, by courts constituted under these Ordinances;

(b) Any offence punishable under sub-section (3) of section 3;

(c) Any offence committed in the scheduled area after the cessation of Martial Law which the District Magistrate may certify to have arisen out of the circumstances which necessitated the enforcement or continuance of Martial Law, provided that courts constituted under section 4 shall not try an offence any act which is an offence by reason only of the fact that it constituted a contravention of a Regulation or Martial Law order made under the Martial Law Ordinance, 1921.

6. (1) Subject to the provisions of this Ordinance, the Local Government or any officer authorized by it in this behalf may, by general or special order, give directions as to the distribution among the various courts constituted under this Ordinance of cases triable thereunder and as to the transfer of cases from one court to another.

(2) Courts constituted under this Ordinance shall sit at such places as the Local Government may, by general or special order, determine.

7. (1) A Summary Court may try any offence mentioned in clause (a), clause (b) or clause (c) of section 5 other than an offence punishable with death or transportation or with imprisonment for a term exceeding five years.

(2) No Summary Court shall pass a sentence of imprisonment for a term exceeding two years or of fine exceeding one thousand rupees.

8. A Special Magistrate may try any offence mentioned in clause (a), clause (b) or clause (c) of section 5 other than an offence punishable with death, and may pass any sentence which may be passed by a Magistrate specially empowered under section 50 of the Code of Criminal Procedure, 1898.

9. A Special Judge may try any offence mentioned in clause (a), clause (b) or clause (c) of section 5, and may pass any sentence authorized by law or by regulations under this Ordinance.

10. In the trial of cases under this Ordinance the Courts shall follow the procedure laid down in the Code of Criminal Procedure, 1898, for the trial of warrant cases, and shall have all the powers conferred by the said Code on a Magistrate in regard to the issue of process to compel appearance and to compel the production of documents and other movable property:

Provided that

(a) a court shall not be required to record more than a memorandum of the evidence and shall not be bound to adjourn any trial for any purpose, unless such adjournment is in its opinion necessary in the interests of justice,

(b) in the trial of any offence punishable with imprisonment for a term not exceeding one year, a court may follow the procedure for the summary trial of cases in which an appeal lies, laid down in Chapter XXII of the said Code, and

(c) where the accused has cross-examined, or had the opportunity of cross-examining, any witness, a court shall not be bound to recall such witness for the purpose of cross-examination.

11. (1) An appeal shall lie from the judgment of a summary court to the court of a Special Judge employed by the Local Government to hear appeals from the judgment of such summary court, in any case where under the provisions of Chapter XXXI of the Code of Criminal Procedure, 1898, an appeal would lie to a Court of Session if the summary court were the court of a Magistrate of the first class.

(2) An appeal shall lie from the judgment of a Special Magistrate to the court of a Special Judge empowered by the Local Government to hear appeals from the judgment of such Special Magistrate:

Provided that, where in any case a Special Magistrate passes any sentence of imprisonment for a term exceeding four years or any sentence of transportation, the appeal shall lie to the High Court.

(3) An appeal shall lie under the said provisions from the judgment of a Special Judge and the provisions of sections 371 (5) and 374 of the said Code shall apply, as if such Judge were a Sessions Judge.

(4) The period within which an appeal under this section shall be preferred shall be, in the case of an appeal against a sentence of death, seven days, and in any other case, fifteen days from the date of the sentence.

(5) A court disposing of an appeal under this section may exercise all the powers conferred on, and shall, so far as may be, follow the procedure prescribed for an appellate court by the provisions of Chapter XXXI of the said Code.

12. The powers of reference and revision conferred on courts by Chapter XXXII of the Code of Criminal Procedure, 1898, shall be exercisable in respect of proceedings before courts constituted under this Ordinance as if a summary court were the court of a Magistrate of the first class, a Special Magistrate were a Magistrate especially empowered under section 30 of the said Code and a Special Judge were a Sessions Judge:

Provided that the powers conferred by this section shall be exercisable only by such Special Judge as has been empowered by order in writing by the Local Government in this behalf.

13. The powers of the Governor-General in Council or the Local Government to make orders under section 401 or section 403 of the Code of Criminal Procedure, 1898, shall apply in respect of persons sentenced under this Ordinance.

14. Notwithstanding the provisions of the Code of Criminal Procedure, 1898, or of any other law for the time being in force or of anything having the force of law by whatever authority made or done, save as provided in this Ordinance,

(a) there shall be no appeal from any sentence or order of a court constituted under section 4,

(b) no court shall have authority to transfer any case from a court so constituted, or to make any order under section 491 of the said Code, or have any jurisdiction of any kind in respect of any judicial proceedings under this Ordinance, and

(c) an order of confirmation shall be necessary in the case of any such sentence.

16. (1) The Local Government or any officer authorized by it in this behalf may, by general or special order, transfer any case which, immediately prior to the cessation of Martial Law, was pending before any court constituted under the Martial Law Ordinance, 1921, the Martial Law (Supplementary) Ordinance, 1921, or the Martial Law (Special Magistrates) Ordinance, 1921, to a court constituted under this Ordinance, having jurisdiction hereunder to try the same.

(2) Where any case has been transferred under the provisions of sub-section (1), the provisions of section 259 of the Code of Criminal Procedure, 1908, shall apply as if the courts constituted under any of the said Ordinances were courts of Magistrates exercising jurisdiction under the said Code.

Provided that, where the person presiding over a court constituted under this Ordinance is the person who presided over the court before which the proceedings began, it shall not be necessary in any case for him to re-swear and rehear any of the witnesses.

(3) The Local Government may direct that any case which, immediately prior to the cessation of Martial Law, was pending before a Military Court constituted under the provisions of the Martial Law (Military Courts) Ordinance, 1921, shall be tried by a court constituted under this Ordinance having jurisdiction hereunder to try the same, and such court shall in every such case rehear and rehear the witnesses.

(4) A case in which a Military Court so constituted has recorded its finding and sentence before the cessation of Martial Law shall not be deemed to be pending within the meaning of sub-section (1), and in any such case all powers vested in a confirming authority or in any other authority, whether by way of confirmation of the sentence or of mitigation, remission or commutation of the sentence or of pardon or otherwise shall be exercisable, and any sentence confirmed or imposed by any such authority shall be carried into execution, as if Martial Law had not ceased to be in force and as if the Martial Law (Military Courts) Ordinance, 1921, had continued in force, provided that the confirming authority shall not have power to order revision of the finding or sentence of a Military Court under section 109 of the Indian Army Act, 1911.

16. No sentence, finding or order passed by a court constituted under this Ordinance shall be invalid by reason only of an error, omission or irregularity in any of the proceedings before or during the trial unless such error, omission or irregularity has in fact caused a failure of justice.

17. No suit, prosecution or other legal proceedings whatsoever shall lie against any person for, or on account of, or in respect of any Act, matter or thing ordered or done, or purporting to have been ordered or done, in the exercise of any powers conferred by or under this Ordinance:

Provided that nothing in this section shall prevent the institution of proceedings by, or on behalf of, the Government against any person in respect of any matter where such person has not acted in good faith and a reasonable belief that his action was necessary.

18. The Martial Law Ordinance, 1921, the Martial Law (Supplementary) Ordinance, 1921, the Martial Law (Military Courts) Ordinance, 1921, and the Martial Law (Special Magistrates) Ordinance, 1921, are hereby repealed.

THE SECRETARY.

(See Section 2.)

The cases comprised within the following table in the Malabar district of the Madras Presidency, namely, Walthamsted, Ponnani, Ernad and Calicut

READING,
Pinnag and Governor-General.

NOTIFICATIONS.

No. 46.—Under the power conferred by section 3 of the Malabar (Restoration of Order) Ordinance, 1921, His Excellency the Governor in Council is pleased to make the following regulations:—

(1) The powers of arrest conferred on a police officer by section 54 of the Code of the Criminal Procedure may be exercised by any officer or other rank in command of any body of troops or by any one acting under his orders.

(2) In the absence of a magistrate or a commissioned officer the senior officer or other rank present in command of any body of troops or armed police shall have all the powers of a magistrate or a commissioned officer under chapter IX of the Code of Criminal Procedure.

(3) It shall be lawful for any magistrate or commissioned officer or, in the absence of such, the senior officer or other rank present in command of any body of troops or armed police to use such force as may be necessary to effect the capture, or prevent the escape, of any person with arms or of any person reasonably believed to have been concerned in, or to be making preparations for the commission of, any murder or dacoity or any offence under section 121 of the Indian Penal Code or any offence described in section 3 of the Mappilla Outrages Act, 1859; and such force may extend to causing death.

(4) The District Magistrate or Subdivisional Magistrate may prohibit the holding of meetings within any specified area or of any particular meeting, festival or procession if he considers such prohibition necessary in order to prevent a breach of the peace or a disturbance of the public tranquillity.

(5) The District Magistrate may prohibit the entry of any person into, or the departure of any person from, the scheduled area or may restrict the movements of any person within the scheduled area if he considers such prohibition or restriction desirable in the interests of the public tranquillity.

(6) The District Magistrate may prohibit the export of any household goods from the scheduled area or any part thereof and may issue orders to regulate the distribution or sale of household goods within the scheduled area.

(7) On complaint made by any person that he has subsequently to the 26th August 1921 been dispossessed without his consent of any immovable property otherwise than in due course of law any magistrate, if on making a summary enquiry he is satisfied that the complainant was so dispossessed, may direct that the person found in occupation of such property shall be evicted and the complainant placed in possession thereof. Nothing in this regulation shall bar any person from suing to establish his title to such property and to recover possession thereof.

(8) When any person has been notified by the District Magistrate as an offender who has been actively concerned in the recent disorders, no person shall harbour such offender or assist him in any way to evade apprehension, and every person who obtains information regarding the whereabouts of any such notified offender shall forthwith communicate the same to the nearest magistrate or police officer.

(9) Any person who disobeys or contravenes any of these regulations or any order duly issued under them shall be liable on conviction to be punished with imprisonment which may extend to two years, or with fine which may extend to Rs. 1,000, or with both.

No. 47.—Under section 4 of the Malabar (Restoration of Order) Ordinance, 1921, His Excellency the Governor in Council is pleased

(1) to declare that the Summary Courts constituted and the Special Magistrates appointed under the Martial Law Ordinance, 1921, and the Martial Law (Special Magistrates) Ordinance, 1921, respectively, shall continue as Summary Courts and Special Magistrates under the said Ordinance;

(2) to appoint Mr. J. W. Hughes, I.C.S., Mr. A. Edgington, I.C.S., and Mr. R. Narayana Ayyar, I.C.S., to be Special Judges.

(By order of His Excellency the Governor in Council)

R. A. GRAHAM,
Acting Chief Secretary.